UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

WSOU INVESTMENTS, LLC D/B/A BRAZOS LICENSING AND DEVELOPMENT, Plaintiff, v. HEWLETT PACKARD ENTERPRISE COMPANY, Defendant.	Nos. 6:20-cv-00725-ADA 6:20-cv-00726-ADA 6:20-cv-00727-ADA 6:20-cv-00728-ADA

CLAIM CONSTRUCTION ORDER

The parties requested the Court to construe claim terms of the patents asserted in the above identified cases. The Court provided preliminary constructions of the disputed terms on May 13, 2021 and held a claim construction hearing on May 14, 2021, during which the Court heard arguments on the following three claim terms:

(1) "broadcasting from said associated IPSC, said IP addresses of said associated customer networks to other IPSCs";

(2) "deducing an ideal solution from performances of said possible paths on at least one of said criteria";

(3) "dynamically determined."

After careful consideration of the parties' briefs, oral arguments, and the applicable law, the Court enters its final claim constructions as shown below:

I. U.S. Patent No. 7,280,534 (Case No. 6:20-cv-00725-ADA)

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Construction
"associated IP service controller (IPSC)" (claims 1, 20) "IP service controller (IPSC) associated with a CE" (claim 24) [proposed by HPE]	plain and ordinary meaning	"one of at least two distinct mechanisms for exchanging routing information between at least two customer edge switches that is installed either on the switches themselves or at a remote server where it maintains a fixed association with a subset of customer edges"	plain and ordinary meaning
"unique loop-back addresses of customer edges (CE)" (claims 1, 24) "unique loop-back addresses of other customer edges (CE)" claim 20) [proposed by HPE]	plain and ordinary meaning	"unique IP addresses over the OOB (out-of-band) control virtual circuit, where the OOB control virtual circuit defines paths by ATM (Asynchronous Transfer Mode), FR (Frame Relay) or other layer 2 connectivity type, and where the IPSC stores the CE loop-back information in the routing databases (tables)"	"unique IP addresses over the out-of-band control virtual circuit of [other] customer edges (CE)"
"broadcasting from said associated IPSC, said IP addresses of said associated customer networks to other IPSCs" (claims 1, 20, 24) [proposed by HPE]	plain and ordinary meaning	"sending, by an IPSC, the IP addresses of said associated customer networks to other IPSCs over a layer 2 (*i.e.*, Frame Relay or ATM) medium"	plain and ordinary meaning

II. U.S. Patent No. 7,386,630 (Case No. 6:20-cv-00726-ADA)

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Construction
"a customer policy comprising a tunneling mode and a tunnel group identifier" (claims 1, 12, 18) [proposed by HPE]	plain and ordinary meaning	"a policy of a network user that comprises a selected tunneling mode that defines the method of translating the Diffserv information in the MPLS headers into the DSCP value in the encapsulated IP header when packets exit the MPLS network, and comprises a named identifier of groups of network tunnels with similar properties that form a certain topology"	plain and ordinary meaning
"corresponding to the tunnels" (claim 1) [proposed by HPE]	not indefinite, plain and ordinary meaning	indefinite	not indefinite, plain and ordinary meaning
"policy targets" (claims 12, 18) [proposed by HPE]	not indefinite, "network nodes where the mapping policy, the network policy, and/or the customer policy, including any specific routing assignments dictated by such policies, are enforced"	indefinite	not indefinite, plain and ordinary meaning

III. U.S. Patent No. 7,443,832 (Case No. 6:20-cv-00727-ADA)

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Constructions
"a processing means for: a) receiving a path set-up request containing a set of service data associated with a stream to be switched, and for determining in said table at least two criteria stored in corresponding relationship to said set of service data associated with the stream, b) ensuring the connectivity of said multiplicity of label switched routers, on the basis of information data stored in said descriptive structure, c) calculating from among said label switch routers possible paths between a departure node and a destination node taking account of at least one of said two criteria that have been determined and then deducing an ideal solution from	not subject to 35 U.S.C. § 112, ¶ 6, not indefinite, plain and ordinary meaning	Means plus function. The function is: "a) receiving a path set-up request containing a set of service data associated with a stream to be switched, and for determining in said table at least two criteria stored in corresponding relationship to said set of service data associated with the stream, b) ensuring the connectivity of said multiplicity of label switched routers, on the basis of information data stored in said descriptive structure, c) calculating from among said label switch routers possible paths between a departure node and a destination node taking account of at least one of said two criteria that have been determined and then deducing an	Means plus function. The function is: "a) receiving a path set-up request containing a set of service data associated with a stream to be switched, and for determining in said table at least two criteria stored in corresponding relationship to said set of service data associated with the stream, b) ensuring the connectivity of said multiplicity of label switched routers, on the basis of information data stored in said descriptive structure, c) calculating from among said label switch routers possible paths between a departure node and a destination node taking account of at least one of said two criteria that have been determined and

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Constructions
performances of said possible paths on at least one of said criteria, d) assigning each possible path an interest value taking account of said ideal solution and then classifying said possible paths taking account their respective interest values, and e) selecting a path from among said classified possible paths and then associating with said stream to be switched a label representative of said selected path so that said labeled stream is switched via said path to the destination node." (claim 1) [proposed by HPE]		ideal solution from performances of said possible paths on at least one of said criteria, d) assigning each possible path an interest value taking account of said ideal solution and then classifying said possible paths taking account their respective interest values, and e) selecting a path from among said classified possible paths and then associating with said stream to be switched a label representative of said selected path so that said labeled stream is switched via said path to the destination node." The term is indefinite for insufficient disclosure of structure corresponding to the function. Alternatively, the corresponding structure is 2:42–4:8 and 5:48–10:7 of the specification.	then deducing an ideal solution from performances of said possible paths on at least one of said criteria, d) assigning each possible path an interest value taking account of said ideal solution and then classifying said possible paths taking account their respective interest values, and e) selecting a path from among said classified possible paths and then associating with said stream to be switched a label representative of said selected path so that said labeled stream is switched via said path to the destination node." The corresponding structure is 5:36–10:7 of the specification.
"deducing an ideal solution from performances of said	plain and ordinary	"observing the performance of all paths based on at least	plain and ordinary meaning

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Constructions
possible paths on at least one of said criteria" (claim 1) [proposed by HPE]	meaning	one of said criteria, and determining that one path of the possible paths is ideal based on said criteria" Alternative compromise proposal: "deducing an ideal solution from observed performances of all possible paths based on at least one of said criteria"	

IV. U.S. Patent No. 7,519,056 (Case No. 6:20-cv-00728-ADA)

Term/Phrase	Brazos's Proposed Construction	HPE's Proposed Construction	The Court's Preliminary Construction
"dynamically determined" (claims 1, 18, 21) [proposed by HPE]	not indefinite plain and ordinary meaning	indefinite	not indefinite plain and ordinary meaning

SIGNED this 20th day of June, 2021.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE